

**REMARKS**

Claims 1, 3-8 and 10-14 remain pending in the application.

The Applicant respectfully requests that the Examiner reconsider earlier rejections in light of the following amendments and remarks. No new issues are raised nor is further search required as a result of the changes and remarks made herein. Entry of the Amendment is respectfully requested.

**Claims 1, 3-8 and 10-14 over Nortel in view of KIV-7**

In the Office Action, claims 1, 3-8 and 10-14 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Nortel article Securing Voice across the Internet ("Nortel") in view of The Complete PC Solution for the KIV-7 ("KIV-7"). The Applicant respectfully traverses the rejection.

Claims 1, 3-8 and 10-14 recite, *inter alia*, a **payload** of an **encapsulated Type 1 encrypted data stream IP packet** that contains **routing information** for routing the encapsulated Type 1 encrypted data stream to an **analog communications device**.

The Examiner maintained the previous rejections. However, the Examiner acknowledged that Nortel and KIV-7 fail to disclose the previously amended features. The Examiner alleged that Nortel and KIV-7's "routing information is **inherently** included in IP encapsulated security Payload [See RFC 2406 IP Encapsulated Security Payload November 1998]" (hereafter referred to as "IP-ESP"). (see Office Action, page 3)

With respect to a section 103 rejection, the use of **inherency** at all is **entirely improper**. The concept of inherency has **no place in determinations of obviousness** under section 103, as opposed to anticipation under section 102, because "it confuses anticipation by inherency, i.e., lack of novelty, with obviousness, which, though anticipation is the epitome of obviousness, are separate and distinct concepts." Jones v. Hardy, 727 F.2d 1524, 1529, 220 USPQ 1021, 1025 (Fed. Cir. 1984); See also In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775-76 (Fed. Cir. 1983) Since the foundation for the section 103 rejection of claims 1, 3-8 and 10-14 is **improperly** based on an allegedly

**inherent** feature of IP-ESP, it is respectfully requested that the improper rejection be **withdrawn**.

Moreover, the doctrine of inherency is available **only when** the inherency can be established as a **certainty**; **probabilities** are **not sufficient**. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981); In re Chandler, 254 F.2d 396, 117 USPQ 361 (CCPA 1981); Ethyl Molded Prod. Co. at 1032. Nothing within either of Nortel and KIV-7 discloses or suggests that they rely on the features as disclosed by IP-ESP. Thus, even if any features from IP-ESP could be used with either of Nortel and KIV-7, those features are **not necessary** "as a **certainty**" for the operation of either of Nortel and KIV-7.

Moreover, IP-ESP appears to disclose packet encryption that includes a sender that encapsulates into the ESP Payload field either just the upper layer protocol information (for transport mode) or the entire original IP datagram (for tunnel mode). (see section 3.3.2) The encapsulated Payload Data is then encrypted. (see IP-ESP, section 3.3.2)

IP-ESP discloses encryption of an ESP Payload, the ESP Payload including an IP datagram for tunnel mode communications. IP-ESP fails to disclose that the ESP Payload allows routing to an **analog communications device**, as recited by claims 1, 3-8 and 10-14.

Nortel and KIV-7 (and IP-ESP), either alone or in combination, fail to disclose, teach or suggest a **payload** of an **encapsulated Type 1 encrypted data stream IP packet** that contains **routing information** for routing the encapsulated Type 1 encrypted data stream to an **analog communications device**, as recited by claims 1, 3-8 and 10-14.

Accordingly, for at least all the above reasons, claims 1, 3-8 and 10-14 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

**Conclusion**

All objections and/or rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Dan J. P. (#46,504) for".

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